

1828.370 Fixed-price contract clauses.

(a) The contracting officer shall insert the clause at 1852.228-70, Aircraft Ground and Flight Risk, in all negotiated fixed-price contracts for the development, production, modification, maintenance, or overhaul of aircraft, or otherwise involving the furnishing of aircraft to the contractor, except as provided in paragraph (b) of this section, unless the aircraft are covered by a separate bailment. See the clause preface for directions for modifying the clause to accommodate various circumstances.

(b) The Government need not assume the risk of aircraft damage, loss, or destruction as provided by the clause at 1852.228-70 if the best estimate of premium costs that would be included in the contract price for insurance coverage for such damage, loss, or destruction at any plant or facility is less than \$500. If it is determined not to assume this risk, the clause at 1852.228-70 shall not be made a part of the contract, and the cost of necessary insurance to be obtained by the contractor to cover this risk shall be considered in establishing the contract price. In such cases, however, if performance of the contract is expected to involve the flight of Government-furnished aircraft, the substance of the clause at 1852.228-71, Aircraft Flight Risks, suitably adapted for use in a fixed-price contract, shall be used.

(c) When the clause at 1852.228-70 is used, the term "Contractor's premises" shall be expressly defined in the contract Schedule and shall be limited to places where aircraft may be located during the performance of the contract. Contractor's premises may include, but are not limited to, those owned or leased by the contractor or those for which the contractor has a permit, license, or other right of use either exclusively or jointly with others, including Government airfields.

1828.371 Clauses for cross-waivers of liability for Space Shuttle services, Expendable Launch Vehicle (ELV) launches, and Space Station activities.

(a) In agreements covering Space Shuttle services, certain ELV launches, and Space Station activities,

NASA and other signatories (the parties) agree not to bring claims against each other for any damage to property or for injury or death of employees that occurs during the time such a cross-waiver is in effect. These agreements involving NASA and other parties include, but are not limited to, Memoranda of Understanding with foreign Governments, Launch Services Agreements, and other agreements for the use of NASA facilities. These agreements require the parties to flow down the cross-waiver provisions to their related entities so that contractors, subcontractors, customers, and other users of each party also waive their right to bring claims against other parties and their similarly related entities for damages arising out of activities conducted under the agreements. The purpose of the clauses prescribed in this section is to flow down the cross-waivers to NASA contractors and subcontractors.

(b) The contracting officer shall insert the clause 1852.228-72, Cross-waiver of Liability for Space Shuttle Services, in solicitations and contracts of \$100,000 or more when the work to be performed involves "Protected Space Operations" (applicable to the Space Shuttle) as that term is defined in the clause. If Space Shuttle services under the contract are being conducted in support of the Space Station program, the contracting officer shall insert the clause prescribed by paragraph (d) of this section and designate application of the clause to those particular activities.

(c) The contracting officer shall insert the clause at 1852.228-78, Cross-Waiver of Liability for NASA Expendable Launch Vehicle (ELV) Launches, in solicitations and contracts of \$100,000 or more for the acquisition of ELV launch services when the service is being acquired by NASA pursuant to an agreement described in paragraph (a) of this section. If, under a contract that covers multiple launches, only some of the launches are for payloads provided pursuant to such agreements, an additional clause shall be inserted in the contract to designate the particular launches to which this clause applies. If a payload is being launched by use of an ELV in support of the